
CHAPTER 6

CONSERVATION DISTRICT LAW AND LEGAL INFORMATION

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Introduction

Kansas conservation districts are political subdivisions of state government. District supervisors are *public* officials and district employees are *public* employees. In order to maintain the public trust, and be eligible for public funds, conservation districts must comply with applicable Kansas Statutes.

By law, the State Conservation Commission (SCC) is responsible to provide administrative assistance to conservation districts. The SCC's responsibilities are outlined in Conservation District Law K.S.A. 2-1904 and include employee training, dissemination of information and providing awareness on statutory and other requirements applicable to conservation districts. While a conservation district has access to the State Attorney General's Office, as well as their local county attorney, it is recommended districts rely on the SCC as the primary source of assistance regarding legal matters.

Note: Other applicable Kansas Statutes are referenced throughout this handbook and were used to develop SCC recommendations, policy and guidance. Districts may contact the State Conservation Commission if additional information is required.

CONSERVATION DISTRICT LAW

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Attorney General Opinions (Applicable to Conservation Districts)

1. Installment Purchases

Attorney General Opinion No. 92-121: "The Decatur county soil conservation district does not have the authority to enter into a lease-purchase agreement that exceeds the current budget year."

COMMENT: The agreement must specifically state that the municipality (i.e. Conservation District) is obligated only to pay periodic payments or monthly installments under the agreement within the current budget year.

Note: See also AG Opin. No. 96-2

2. Voting Procedures

Attorney General Opinion No. 82-178: "In that a watershed district organized pursuant to K.S.A. 24-2101 et seq., is a quasi-municipal corporation, as a quorum may be established, and any votes taken by the board of directors, only with those directors who are present, thus precluding the use of voting by proxy."

COMMENT: The point is made that only official members of a governmental body may be counted toward establishing a quorum and only votes cast by such members are acceptable in official actions of the body. Advisors are not, nor can they be designated as, official members of a governing body.

Attorney General Opinion No. 82-43: "If a quorum of a municipal council is present and a majority of the members voting vote in favor of a particular matter, abstentions from voting are to be counted as acquiescence with the votes of the majority, and the action will bind the body. Abstentions from voting may not be counted as acquiescence where there is a tie vote and the proposition fails for a lack of a majority voting in favor thereof."

3. Retail Sales

Attorney General Opinion No. 82-191: "A soil conservation district, established pursuant to K.S.A. 2-1901 et seq., may sell irrigation equipment for profit to land occupiers within the bounds of the district. Such commercial activity is not violative of either the constitutional prohibition regarding internal improvements or the public purpose doctrine."

COMMENT: It should be noted that irrigation equipment has been interpreted as agricultural equipment as set forth in 2-1908, paragraph (6). Also, the Attorney General reiterates the restriction that such sales may only be made to land occupiers within the district.

4. Liability for Official Acts

Attorney General Opinion No. 82-173: "A watershed district organized pursuant to K.S.A. 24-1201 et seq., is governed by a board of directors selected under K.S.A. 24-1211. An individual of such board is immune from

personal liability for injuries to private individuals resulting as a consequence of his or her official acts."

Attorney General Opinion No. 87-31: "While the Kansas Tort Claims Act establishes the liability of all governmental entities and governmental employees, providing exceptions to liability, a distinction is made between state and municipal employees for purposes of defense coverage under the tort claims fund. To be covered by that fund, a person must be an employee of the state as opposed to an employee of a municipality."

"Even though district supervisors and employees perform functions locally, they act as members of a collective effort to conserve state resources. Therefore they are to be considered state employees for purposes of the Kansas Tort Claims Act."

5. Financing Proposed Projects: Special Assessments

Attorney General Opinion No. 83-20: "The board of directors of a watershed district organized pursuant to K.S.A. 24-1201 et seq., may pay for works of improvement by making special assessments against lands especially benefited by such a project, with such assessments used to pay off improvement bonds issued by the district. Prior to doing so, the board must submit the question of approval of the bond issue to an election, said election involving only the owners of the land so benefitted and assessed. While the making of such special assessments accordingly can be limited to a particular subdistrict, the same is not true of a levy under K.S.A. 24-1219 for general improvement bonds, which must be spread over the entire district."

6. Open Meetings

Attorney General Opinion No. 80-173: "A telephone conference call among members of a public body may constitute a meeting of such body, where the numbers of members engaged in such call is sufficient by statute to transact the business of the body, and so long as all members thereof are notified of the conference call and given the opportunity to participate. Meetings held pursuant to telephone conference calls are subject to the Open Meetings Act where such calls involve a majority of a quorum of the public body's membership, even though the number of members involved is not enough to transact the business of the public body."

Attorney General Opinion No. 82-141: "The Kansas Open Meeting Act (KOMA) requires notice of all regular and special meetings of bodies subject to the act as provided to all persons requesting it..."

Attorney General Opinion No. 82-16: "The KOMA does not prohibit the use of written memoranda between members of a public body subject to the act. However, use of written documents at an otherwise public meeting which effectively deny the public access to the decision-making process may constitute a violation of the KOMA..."

Attorney General Opinion No. 82-247: "K.S.A. 1981 Suppl. 75-4319 (b) authorizes legislative and executive bodies or agencies subject to the KOMA to conduct an

executive session or recess for the purpose of consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. However, the attorney-client privilege may not be invoked if the attorney is not present, or if persons, other than the attorney and his or her agents, are parties to the communication. Moreover, the communication must be confidential in character and be so regarded by the governmental body or agency."

Attorney General Opinion No. 82-176: "A public body subject to the KOMA may not permit individuals or special interest groups, including members of the news media, to attend executive sessions as mere observers while excluding the public generally. Individuals may attend executive sessions of government bodies subject to the Act upon invitation where such persons are present to provide information to the body or participate in its deliberations, but may not attend merely as observers."

Attorney General Opinion No. 81-262: "Informal gatherings of a majority of a quorum of a city commission to discuss city business, held prior to, during or immediately following regularly scheduled meetings, are subject to the requirements of the Kansas Open Meetings Act."

COMMENT: This opinion was not rendered to a conservation district. However, districts are subject to the Kansas Open Meetings Act.

Attorney General Opinion No. 84-103: "A meeting called by the mayor of a city would not come under the scope of the Kansas Open Meetings Act if it were attended by single representatives from other governing bodies, along with representatives of private businesses and the news media. However, if a majority of a quorum of one or more governing bodies attends, the meeting is subject to the Act, with notice accordingly required as provided by K.S.A. 75-4318."

COMMENT: This opinion was not rendered to a conservation district. However, districts are subject to the Kansas Open Meetings Act.

Attorney General Opinion No. 91-31: "K.S.A. 75-4318 permits a city's grievance committee to deliberate on the disposition of an individual employee's grievance matter outside of an open meeting because such a grievance committee, while otherwise subject to the KOMA, is acting in a quasi-judicial manner within the scope of authority of that committee. Prior to such deliberations, K.S.A. 75-4319 permits the grievance committee to recess from an open meeting into a closed or executive session for the purpose of discussing personnel matters of non-elected personnel, and thus, employment related grievances of individual employees of the city may discretionarily be discussed in a properly recessed executive or closed session. Individuals who aid the committee in such a discussion may be discretionarily permitted into such a closed or

executive session. However, binding decisions by the committee must be made in an open meeting."

COMMENT: This opinion was not rendered to a conservation district. However, districts are subject to the Kansas Open Meetings Act.

7. Funding

Attorney General Opinion No 82-184: "The provisions of K.S.A. 1981 Supp. 2-1907b are permissive with respect to the payment of county monies for the operation of a conservation district, and boards of county commissioners are not required by this statute to make such payments."

Attorney General Opinion No. 91-100: "Levies for county extension council employee benefit plan expenses are exempted from the limitations of K.S.A. 79-5021 et seq., and amounts produced from such levies should not be considered in computing the county's aggregate limitation."

COMMENT: This opinion was not rendered to a conservation district. However, funding is provided to a conservation district (political subdivision) from a county government (taxing subdivision) under limitations set forth in K.S.A. 79-5021.

8. Budgets

Attorney General Opinion No. 84-34: "As a general rule, a special district that certifies tax levy or budget to another political subdivision, but which does not directly levy a tax, is not subject to the Kansas Budget Law."

9. Realty Sales

Attorney General Opinion No. 81-20: "A watershed district organized pursuant to K.S.A. 24-1201 et seq. is a body corporate and politic, and has among its enumerated powers the ability to sell land and execute the necessary contracts therefore. Insofar as the sale of land on contract advances the purposes of the district and is otherwise properly made, such a sale is binding on the successors to the present board and does not violate either the Cash Basis Law (K.S.A. 10-1101 et seq.) or any other Kansas statutes."

10. No Fund Warrants

Attorney General Opinion No. 87-134: "A watershed district issuing no-fund warrants under K.S.A. 24-1219, as amended, must make a tax levy at the first tax levying period after such warrants are issued sufficient to pay such warrants and interest. A watershed district may apply to the board of tax appeals for the authority to issue no-fund warrants under K.S.A. 79-2939 only if the district incurs unanticipated expenses which could not have been foreseen at the time the district's budget for the current budget year was being prepared."

11. Directors or Supervisors Serving as Employees

Attorney General Opinion 79-301: "A director of a watershed district established pursuant to K.S.A. 24-1201 et seq., may not at the same time be employed by the district as a paid assistant."

COMMENT: This opinion was not rendered to a conservation district, however, the Watershed District Act and the Conservation District Law (K.S.A. 24-1210 and 2-1907) both state directors or supervisors "shall serve without compensation," thus applying this opinion to conservation districts.

12. Securities for Deposits of Public Funds

Attorney General Opinion No. 87-98: "Mutual funds may not be used as securities for the deposit of state and municipal funds."

13. Annual Meeting - Report of Financial Condition and Activities

Attorney General Opinion No. 88-20: "In preparing the annual report as prescribed by K.S.A. 24-1211, the board of directors of a watershed district must separately evaluate each of the districts projects in regard to the public interest and make a determination relative thereto. Additionally, in determining whether a project is in the public interest, the board is to consider the interest of all persons in the district."

14. Open Records

Attorney General Opinion No. 87-4: "The Kansas Open Records Act provides that public agencies may charge reasonable fees for photocopying public records. Fees are reasonable if they do not exceed the actual cost, or costs directly incurred, in providing copies."

COMMENT: This opinion was not rendered to a conservation district, however, conservation districts are subject to the Kansas Open Records Act.

Attorney General Opinion No. 87-137: "A custodian of public records who reasonably believes that a requestor will use the information for prohibited purposes must deny access to the records. Disclosure of the information in such a case will subject the custodian to possible criminal charges. The Kansas Open Records Act does not require a public agency which maintains records on computer facilities to write a computer program to produce requested information in a certain form if the information is available in existing records."

Attorney General Opinion No. 91-50: "If a public record qualifies as a personal record, it may be closed pursuant to K.S.A. 1990 Supp. 45-221 (a) (4), with the exception of the information noted therein. However, not every public record concerning public employees automatically qualifies as a personal record. Public records may be closed pursuant to K.S.A. 1990 Supp. 45-221 (a) (30) when public disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure under this subsection may not occur if the elements of the invasion of privacy are not present, if the invasion of privacy can be eliminated by deleting the identifying personal information pursuant to K.S.A. 1990 Supp. 45-221 (d), by providing statistical information pursuant to K.S.A. 1990 Supp. 45-221 (e), or if the individual whose privacy interest is at risk consents to the disclosure. Closure under K.S.A. 1990

Supp. 45-221 (a) (4) or (a) (30) is discretionary not mandatory."

15. County Purchased Equipment

Attorney General Opinion No. 92-152: "The Decatur board of county commissioners cannot buy a plow with money from the general fund to give to the soil conservation district so that they can lease it to private individuals."

16. Lease/Purchase Agreements; Applicability of Cash Basis Law To Conservation Districts

Attorney General Opinion No. 96-2: "A conservation district is defined as a municipality under K.S.A. 1995 10-1101(a) and may utilize the provisions of K.S.A. 10-1116b to enter into a lease -purchase agreement if such an agreement does not violate the restrictions still in place under K.S.A. 2-1908(l). A properly worded lease-purchase agreement containing the language and limitations set forth in K.S.A. 10-1116b and 10-1116c, does not create a debt obligation exceeding the current budget year."

COMMENT: K.S.A. 10-1116b permits governing bodies of municipalities subject to the cash basis law to enter into agreements which provide for periodic payments or monthly installments, but only if the following language is included. The impact of this language results in an agreement, which does not obligate the municipality to make payments beyond the current budget year. A lease-purchase agreement must specifically state: "that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may be lawfully made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source..."

SOIL CONSERVATION ACT OF APRIL 27, 1935
(16 U.S.C. 590a-590e; 49 Stat. 163;
Public No. 46, 74th Congress)

Title 16, United States Code

590a. Prevention of soil erosion; surveys and investigations; preventive measures; cooperation with agencies and persons; acquisition of land.

It is recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment, and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion and in order to effectuate this policy is authorized, from time to time --

- (1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventative measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water;
 - (2) To carry out preventive measures including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land;
 - (3) To cooperate or enter into agreements with, or to furnish financial or other aid to, any agency, governmental or otherwise, or any person, subject to such conditions as he may deem necessary, for the purposes of this chapter; and
 - (4) To acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this chapter.
- (Apr. 27, 1935, ch. 85, 1, 49 Stat. 163.)

590b. Lands on which preventive measures may be taken.

The acts authorized in section 590a (1) and (2) of this title may be performed--

- (a) On lands owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction thereof; and
- (b) On any other lands, upon obtaining proper consent or the necessary rights or interests in such lands. (Apr. 27, 1935, ch. 85, 2, 49 Stat. 163)

590c. Conditions under which benefits of law extended nongovernment controlled lands.

As a condition to the extending of any benefits under this chapter to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of said sections, require--

- (1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion;
 - (2) Agreements or covenants as to the permanent use of such lands; and
 - (3) Contributions in money, services, materials, or otherwise, to any operations conferring such benefits.
- (Apr. 27, 1935, ch. S5, 3, 49 Stat. 163.)

590d. Cooperation of governmental agencies; officers and employees, appointment and compensation; expenditures for personal services and supplies.

SOIL CONSERVATION ACT OF APRIL 27, 1935 (continued)

For the purposes of this chapter, the Secretary of Agriculture may--

- (1) Secure the cooperation of any governmental agency;
 - (2) Subject to the provisions of the civil-service laws and the Classification Act of 1949, as amended, appoint and fix compensation of such officers and employees as he may deem necessary, except for a period not to exceed eight months from the date of this enactment, the Secretary of Agriculture may make appointments and may continue employees of the organization heretofore established for the purpose of administering those provisions of the National Industry Recovery Act which relate to the prevention of soil erosion, without regard to the civil-service laws or regulations and the Classification Act of 1949, as amended; and any persons with technical or practical knowledge may be employed and compensated under this chapter on a basis to be determined by the Civil Service Commission; and
 - (3) Make expenditures for personal services and rent in the District of Columbia and elsewhere, for the purchase of law books and books of reference, for printing and binding, for the purchase, operation and maintenance of passenger-carrying vehicles and perform such acts, and prescribe such regulations, as he may deem proper to carry out the provisions of this chapter.
- (Apr. 27, 1935, ch. 85; 4,49 Stat. 164; Oct 8, 1949, ch. 782, title XI,; 1106 (a), 63 Stat. 972.)

590e. Soil Conservation Service; establishment; utilization and transfer of existing governmental agencies.

The Secretary of Agriculture shall establish an agency to be known as the "Soil Conservation Service," to exercise the powers conferred on him by this chapter and may utilize the organization heretofore established for the purpose of administering those provisions of sections 202 and 203 of the National Industrial Recovery Act which relate to the prevention of soil erosion, together with such personnel therefor as the Secretary of Agriculture may determine, and all unexpected balances of funds heretofore allotted to said organization shall be available until June 30, 1937, and the Secretary of Agriculture shall assume all obligations incurred by said organization prior to transfer to the Department of Agriculture. In order that there may be proper coordination of erosion control activities the Secretary of Agriculture may transfer to the agency created under this chapter such functions, funds, personnel, and property of other agencies in the Department of Agriculture as he may from time to time determine.

(Apr.27, 1935, ch. 85; 5, 49 Stat. 164)

SOIL EROSION CAUSED BY WIND

SOIL EROSION CAUSED BY WIND (continued)

SOIL EROSION CAUSED BY WIND (continued)

WATERSHED DISTRICT LAW

WATERSHED DISTRICT LAW (continued)

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WATERSHED AND FLOOD PREVENTION ACT

WATERSHED AND FLOOD PREVENTION ACT (continued)

WATERSHED AND FLOOD PREVENTION ACT (continued)

WATERSHED AND FLOOD PREVENTION ACT (continued)
PERTINENT SECTIONS OF KANSAS STATUTES
RELATING TO NATURAL RESOURCES

24-105. OBSTRUCTING FLOW OF SURFACE WATER; APPLICATION TO BUILD LEVEE; CONTENTS; EXAMINATION BY ENGINEER; PERMIT. It shall be unlawful for a landowner or proprietor to construct or maintain a dam or levee which has the effect of obstructing or collecting and discharging with increased force and volume the flow of surface water to the damage of the adjacent owner or proprietor; but nothing herein shall be construed as preventing an owner of land from constructing a dike or levee along the bank of a natural watercourse to repel flood waters from such natural watercourse if plans therefore have been approved as required in section 24-126 of the General Statutes of 1949, as amended: Provided, That the provisions of this section shall apply only to lands used for agricultural purposes and highways lying wholly outside the limits of any incorporated city: Provided further, That where such surface water is the overflow of a watercourse on the premises of an upper landowner and such upper landowner has not constructed or maintained a levee along the bank of such watercourse to prevent the overflow, any landowner may make application to the chief engineer of the division of water resources stating in such application that an upper landowner, or landowners, if more than one, whose name and address is given in the petition, has not constructed a levee on his land to prevent the overflow from the stream, and requesting permission to build a levee on his own land to repel such flood water.

Each application shall be accompanied by maps, profiles, cross sections and such other data and information as the chief engineer of the division of water resources may require. The chief engineer of the division of water resources shall then set a day to examine the location of the proposed levee and shall notify the landowners whose names and addresses are given in said petition. If he finds from an examination of the location of the proposed levee and the submitted plans that the construction of the proposed levee is feasible, not adverse to the public interest and should be built he may then grant permission for its construction. (L. 1911, ch. 175, sec. 1; L. 1917, ch. 176, sec. 1; R.S. 1923, 23-105; L. 1931, ch. 184, sec. 1; L. 1951, ch. 261, sec. 1; April 2.)

24-106. SAME; LANDOWNERS MAY CONSTRUCT OUTLETS LEADING INTO GENERAL COURSE OF NATURAL DRAINAGE. Owners of land may drain the same in the general course of natural drainage, by constructing open or covered drains, into any natural depression, draw, or ravine, on his own land, whereby the water will be carried by said depression, draw, or ravine into some natural watercourse, or into any drain upon a public highway, for the purpose of securing proper drainage to such land; and he shall not be liable in damages therefor to any person or persons or corporation: Provided, That owners of land constructing an outlet to a drain upon any public road, shall leave the road in as good condition as it was before the drain was constructed, the question as to such condition to be determined by the board of county commissioners and the county engineer in counties having a county engineer, and in other counties the county surveyor. (L. 1911, ch. 175, sec. 2; L. 1917, ch. 176, sec. 2; March 26; R.S. 1923, 24-106.)

68-545. UNLAWFUL OBSTRUCTIONS, EXCAVATIONS, REMOVAL OF MATERIALS, DUMPING TRASH OR OTHER MATERIALS OR PLOWING OF ROADS; PENALTY. That it shall be unlawful for any person or persons to obstruct any public highway in any manner with intent to prevent the free use thereof, or to make any holes therein, or to remove any earth, gravel or rock therefrom or any part thereof, or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material, on any highway or any ditch on the side of any highway, or to plow any public highway for the purpose of scouring plows, or for any other purpose except for the improvement of such highway and as directed in writing by the county engineer and the township board of highway commissioners acting jointly; and any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than fifty dollars (\$50), with the costs of suit. (L. 1917, ch. 264, sec. 52; R.S. 1923, 68-545; L. 1951, ch. 386, sec. 1; L. 1961, ch. 305, sec. 1; June 30.)

PERTINENT SECTIONS OF KANSAS STATUTES RELATING TO NATURAL RESOURCES (continued)

82a-301. PERMIT OR CONSENT OF CHIEF ENGINEER REQUIRED TO CONSTRUCT DAMS OR OTHER WATER OBSTRUCTIONS; EXCEPTIONS. Without the prior written consent or permit of the chief engineer of the division of water resources of the state board of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (a) Construct any dam or other water obstruction, (b) make, construct or permit to be made or constructed any change in any dam or other water obstruction, (c) make or permit to be made any change in or addition to any existing water obstruction, or (d) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

HISTORY: K.S.A. 82a-301; L. 1978, ch. 431, Sec. 6; April 11.

82a-301a. EXCLUSION REGULATION AND SUPERVISION OF DAMS AND OTHER WATER OBSTRUCTIONS BY CHIEF ENGINEER. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the state board of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property.

HISTORY: L. 1978, ch. 431, Sec. 1; April 11.

82A-302. SAME; MAPS, PLANS, PROFILES AND SPECIFICATION TO ACCOMPANY APPLICATION. Each application for the consent or permit required by K.S.A. 1978 Supp. 82a-301 shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, and such other data and information as the chief engineer may require.

HISTORY: K.S.A. 82a-302; L. 1978, ch. 431, Sec. 7; April 11.

82a-303. SAME; CONDITIONS TO PERMITS; UNLAWFUL ACTS. The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such terms, conditions and restrictions as may be deemed by him or her advisable. It shall be unlawful to: (a) Construct or begin the construction of any dam or other water obstruction, or (b) make or begin any change or addition in any dam or other water obstruction, except in accordance with the terms, conditions and restrictions of such consent or permit, and such rules and regulations as may be adopted by the chief engineer of the division of water resources.

HISTORY: K.S.A. 82a-303; L. 1978, ch. 431, Sec. 8; April 11.

82a-303a. RULES AND REGULATIONS BY CHIEF ENGINEER. The chief engineer of the division of water resources of the state board of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act.

HISTORY: L. 1978, ch. 431, Sec. 2, April 11.

PERTINENT SECTIONS OF KANSAS STATUTES RELATING TO NATURAL RESOURCES (continued)

82a-303b. INSPECTION OF DAMS BY CHIEF ENGINEER; ACCESS TO PRIVATE PROPERTY; COSTS OF INSPECTION. In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 1978 Supp. 82a-301 to 82a-303, inclusive, and any amendments thereof, the chief engineer or an authorized representative of the chief engineer shall have the power and it shall be his or her duty to inspect any dam or other water obstruction. For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator thereof.

HISTORY: L. 1978, ch. 431, Sec. 3; April 11.

82a-303c. VIOLATIONS OF CONDITIONS OR RESTRICTIONS OF PERMIT OR OF RULES AND REGULATIONS; ORDERS OF CHIEF ENGINEER; REMEDIAL MEASURES; EMERGENCY SITUATIONS. (a) Whenever the chief engineer finds that: (1) The construction, modification, operation or maintenance of a dam or other water obstruction is in violation of adopted rules and regulations or of terms, conditions or restrictions of a permit or consent granted by the chief engineer or, (2) conditions exist in the construction, modification, operation or maintenance of a dam or other water obstruction which may present a hazard to the public's safety, he or she shall issue an order to require the correction of any such violation or condition existing in the construction, modification, operation or maintenance of a dam or other water obstruction by the owner or operator thereof. An order may be issued to require the removal of a dam or other water obstruction. The order shall contain the chief engineer's findings concerning any violation or conditions existing and shall prescribe the corrective action to be taken. (b) Whenever the conditions of any dam or other water obstruction is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to construction, modification, maintenance or operation thereof, or, the passing of imminent floods threaten the safety of any dam or other water obstruction, the chief engineer shall immediately employ any remedial means necessary to protect the safety of life or property. The chief engineer shall continue in full charge and control of any such dam or other water obstruction until the same is rendered safe or the emergency occasioning the remedial action has ceased.

HISTORY: L. 1978, ch. 431, Sec. 4; April 11.

82a-304. SAME; EXCEPTION. The provisions of this act shall not apply to any dam which impounds thirty (30) acre fee of water or less.

HISTORY: K.S.A. 82a-304; L. 1978, ch. 431, Sec. 9; April 11.

82a-305.

HISTORY: K.S.A. 82a-305; Repealed, L. 1978, ch. 431, Sec. 10; April 11.

82a-305a. UNLAWFUL ACTS; PENALTIES; INJUNCTION. (a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense. (b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or (2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction.

HISTORY: L. 1978, ch. 431, Sec. 5; April 11.